EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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Restriction of Internet access without a strict legal framework regulating the scope of the ban and affording the guarantee of judicial review to prevent possible abuses amounts to a violation of freedom of expression

In today's Chamber judgment in the case of Ahmet Yıldırım v. Turkey (application no. 3111/10), which is not final[1], the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 10 of the European Convention on Human Rights.

The case concerned a court decision to block access to Google Sites, which hosted an Internet site whose owner was facing criminal proceedings for insulting the memory of Atatürk. As a result of the decision, access to all other sites hosted by the service was blocked.

Principal facts

The applicant, Ahmet Yıldırım, is a Turkish national who was born in 1983 and lives in Istanbul (Turkey).

He owns and runs a website hosted by the Google Sites service, on which he publishes his academic work and his opinions on various matters.

On 23 June 2009 the Denizli Criminal Court of First Instance ordered the blocking of an Internet site whose owner had been accused of insulting the memory of Atatürk. The order was issued as a preventive measure in the context of criminal proceedings against the site's owner.

The blocking order was submitted for execution to the Telecommunications Directorate (TİB). Shortly afterwards, the TİB asked the court to extend the scope of the order by blocking access to Google Sites, which hosted not only the site in question but also the applicant's site. The TİB stated that this was the only technical means of blocking the offending site, as its owner lived abroad.

The TİB blocked all access to Google Sites and Mr Yıldırım was thus unable to access his own site. All his subsequent attempts to remedy the situation were unsuccessful because of the blocking order issued by the court.

In a letter sent to the Court in April 2012 Mr Yıldırım stated that he was still unable to access his own website even though, as far as he was aware, the criminal proceedings against the owner of the other site had been discontinued because it was impossible to determine the identity and address of the accused, who lived abroad.

1 Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), Mr Yıldırım complained that he was unable to access his own Internet site because of a measure ordered in the context of criminal proceedings without any connection to him or his site. He submitted that the measure infringed his right to freedom to receive and impart information and ideas.

The application was lodged with the European Court of Human Rights on 12 January 2010.

Judgment was given by a Chamber of seven judges, composed as follows:

Guido **Raimondi** (Italy), *President*,
Danutė **Jočienė** (Lithuania),
Dragoljub **Popović** (Serbia),
András **Sajó** (Hungary),
Işıl **Karakaş** (Turkey),
Paulo **Pinto de Albuquerque** (Portugal),
Helen **Keller** (Switzerland),

and also Stanley **Naismith**, *Section Registrar.*

Decision of the Court

Article 10

Article 10 guaranteed freedom of expression to “everyone” and applied not only to the content of information but also to the means of disseminating it.

The Court observed that the blocking of access to the applicant’s website had resulted from an order by the Denizli Criminal Court in the context of criminal proceedings against the owner of another site who was accused of insulting the memory of Atatürk. The court had initially ordered the blocking of that site alone. However, the administrative authority responsible for implementing the order (the TİB) had sought an order from the court for the blocking of all access to Google Sites, which hosted not only the offending site but also the applicant’s site. The court had granted the request, finding that the only way of blocking the site in question was to bar access to Google Sites as a whole.

Although neither Google Sites nor Mr Yıldırım’s own site were concerned by the above-mentioned proceedings, the TİB made it technically impossible to access any of those sites, in order to implement the measure ordered by the Denizli Criminal Court.

The Court accepted that this was not a blanket ban but rather a restriction on Internet access. However, the limited effect of the restriction did not lessen its significance, particularly as the Internet had now become one of the principal means of exercising the right to freedom of expression and information. The measure in question therefore amounted to interference by the public authorities with the applicant’s right to freedom of expression. Such interference would breach Article 10 unless it was prescribed by law, pursued one or more legitimate aims and was necessary in a democratic society to achieve such aims.

A rule was “foreseeable” in its application if it was formulated with sufficient precision to enable individuals – if need be, with appropriate advice – to regulate their conduct.

By virtue of Law no. 5651, a court could order the blocking of access to content published on the Internet if there were sufficient reasons to suspect that the content

gave rise to a criminal offence. However, neither Google Sites nor Mr Yıldırım's site were the subject of court proceedings in this case. Although the decision of 24 June 2009 had found Google Sites to be responsible for the site it hosted, no provision was made in Law no. 5651 for the wholesale blocking of access as had been ordered by the court.

Nor did the law authorise the blocking of an entire Internet domain such as Google Sites. Moreover, there was no evidence that Google Sites had been informed that it was hosting content held to be illegal, or that it had refused to comply with an interim measure concerning a site that was the subject of pending criminal proceedings. The Court observed that the law had conferred extensive powers on an administrative body, the TİB, in the implementation of a blocking order originally issued in relation to a specified site. The facts of the case showed that the TİB had had little trouble requesting the extension of the initially limited scope of the blocking order.

The Court reiterated that a restriction on access to a source of information was only compatible with the Convention if a strict legal framework was in place regulating the scope of a ban and affording the guarantee of judicial review to prevent possible abuses. However, when the Denizli Criminal Court had decided to block all access to Google Sites, it had simply referred to an opinion from the TİB without ascertaining whether a less far-reaching measure could have been taken to block access specifically to the site in question. The Court further observed that there was no indication that the Criminal Court had made any attempt to weigh up the various interests at stake, in particular by assessing whether it had been necessary to block all access to Google Sites. In the Court's view, this shortcoming was a consequence of the domestic law, which did not lay down any obligation for the courts to examine whether the wholesale blocking of Google Sites was justified. The courts should have had regard to the fact that such a measure would render large amounts of information inaccessible, thus directly affecting the rights of Internet users and having a significant collateral effect.

The interference resulting from the application of section 8 of Law no. 5651 had thus failed to meet the foreseeability requirement under the Convention and had not afforded the applicant the degree of protection to which he was entitled by the rule of law in a democratic society. The Court also pointed out that Article 10 § 1 of the Convention stated that the right to freedom of expression applied "regardless of frontiers".

The effects of the measure in question had therefore been arbitrary and the judicial review of the blocking of access had been insufficient to prevent abuses. There had therefore been a violation of Article 10 of the Convention.

Just satisfaction (Article 41)

The court held that Turkey was to pay the applicant 7,500 euros (EUR) in respect of non-pecuniary damage and EUR 1,000 in respect of costs and expenses.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.